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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,727	03/30/2004	Armin Breitenmoser	DT-6777	4812
30377	7590	09/14/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			TRUONG, THANH K	
		ART UNIT	PAPER NUMBER	3721

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/812,727	BREITENMOSER, ARMIN
	Examiner	Art Unit
	Thanh K. Truong	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 August 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3,6 and 7 is/are rejected.
- 7) Claim(s) 5 and 8 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 22, 2005 has been entered.
2. Applicant's cancellation of claims 1, 2 and 4 is acknowledged.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Marchetti (4,112,271).

Marchetti discloses an apparatus comprising: a housing having a switch recess (21) formed therein, and an actuation member (27) displaceably arranged in the switching recess for shifting a functional unit between different functional steps (column 3, lines 7-11); and functional step display means including a read-out device (23) having a plurality of marks for identifying respective functional steps, means for mechanically

connecting the read-out device with the actuation member and carrying the identifying marks, and display means provided in the housing for displaying the identifying marks and spaced from the switching recess, the mechanically connecting means having a plurality of different positions corresponding to the different functional steps (number 0 to number 9), and the display means displaying only one identifying mark, which corresponds to an actual functional step, in each position of the mechanically connecting means (as shown in figure 1; only one identifying mark is displayed in each functional step), wherein the display means is formed by a recess (20) provided in the housing, and wherein both the switching recess (21) and the display means recess (20) are formed in an upper, with respect to the handle, surface of the housing.

5. Claims 3, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hsu (6,186,709).

Hsu discloses an apparatus comprising: a housing having a switch recess (40) formed therein, and an actuation member (31) displaceably arranged in the switching recess for shifting a functional unit between different functional steps (L & H); and functional step display means including a read-out device (20) having a plurality of marks for identifying respective functional steps, means for mechanically connecting the read-out device with the actuation member and carrying the identifying marks, and display means provided in the housing for displaying the identifying marks and spaced from the switching recess (the recess 40 comprises the switch recess and the display means recess and the two recesses are spaced apart by the protrusions on both sides

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of member 31 – figures 1 & 2), the mechanically connecting means having a plurality of different positions corresponding to the different functional steps (L & H), and the display means displaying only one identifying mark, which corresponds to an actual functional step, in each position of the mechanically connecting means (as shown in figure 1, only one identifying mark is displayed in each functional step as the member 20 slides in the recess 40), wherein the display means is formed by a recess (40) provided in the housing, and wherein both the switching recess (40) and the display means recess are formed in an upper, with respect to the handle, surface of the housing (figure 1).

Hsu further discloses: the mechanically connecting means comprises a slide member (20) formed, together with the actuation member (31), as a one-piece element (30 – figure 2); and the actuation member is provided on the slide member.

### ***Allowable Subject Matter***

6. Claims 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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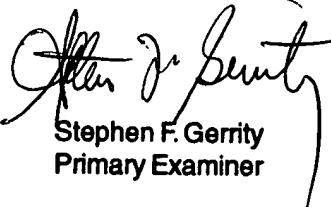
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 8, 2005.



Stephen F. Gerrity  
Primary Examiner